

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARC FISHMAN, INDIVIDUALLY, and on behalf of all
others similarly situated

Plaintiff,

v.

DECLARATION OF
LEE ALAN ADLERSTEIN

18–CV–00282 (KMK)

Office of Court Administration New York State Courts,
Judge Michelle I. Schauer in her administrative and official
capacity, Nancy J. Barry, District Executive 9th District NY
Courts in her administrative and official capacity, Dan Weisz,
Professional Director In his administrative and official capacity
New York Courts, Michelle D’ambrosio in her administrative
and official capacity, Magistrate Carol Jordan in Her
administrative and official capacity Capacity, Judge Gordon
Oliver in her Administrative and Official Capacity and Judge
Kathy Davidson, Chief Administrative Judge 9th circuit and
former Chief Judge of the Westchester Family Court in her
administrative and official capacity and the New York State
Unified Court System, and Judge Hal Greenwald, in his
administrative and official capacity Judge Alan Scheinkman
in his administrative and official capacity as Chief
Administrative Judge of the 9th Circuit courts,

Defendants

LEE ALAN ADLERSTEIN, pursuant to 28 U.S.C § 1746, declares under penalty of
perjury that the following is true and correct:

1. I am Deputy Counsel in the Office of John W. McConnell, Counsel to the Office
of Court Administration (“OCA”), attorney for defendants OCA, Nancy Barry, and Dan Weitz
(collectively, “OCA Defendants”). I submit this declaration in support of OCA Defendants’
accompanying motion to dismiss the Second Amended Complaint (“SAC”) pursuant to
Fed.R.Civ.P. 12(b)(6).

2. Plaintiff pro se Marc Fishman (“Association”) is a state Family Court litigant
who claims to be disabled. SAC ¶ 1.

3. Defendant OCA is the administrative arm of the New York State Unified Court System, the judicial branch of the government of the State of New York. SAC ¶ 1. Defendant Barry, sued in her official capacity, is the District Executive for the Ninth Judicial District. SAC ¶ 1. Dan Weitz, sued in his official capacity, is the court system's Statewide ADA Coordinator. SAC ¶ 1.

4. The SAC alleges that plaintiff was denied reasonable accommodation for various disabilities he allegedly has during the course of proceedings against him in the Family Court of Westchester County. SAC, *passim*. Plaintiff alleges that these denials, and the procedures pursuant to which his requests were reviewed, violated the Americans with Disabilities Act and the Rehabilitation Act, and he seeks injunctive relief granting him the accommodations he has requested and compensatory damages. SAC, *passim*.

5. OCA Defendants assert that the claims against them should be dismissed pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

6. As discussed more fully in the accompanying memorandum of law, defendants Barry and Weitz assert that they are immune from suit for money damages because they are sued in their official capacities, and that the claims against them are redundant of those against defendant OCA, and that all claims against them should therefore be dismissed.

7. As discussed more fully in the accompanying memorandum of law, OCA Defendants assert that the SAC fails to state a claim, because plaintiff has not plausibly alleged that defendants denied him an opportunity to participate in the programs, services or activities of a public entity, or otherwise discriminated against him on the basis of disability.

8. This Declaration is also made for the purpose of bringing before the Court two documents (annexed herewith as Exhibit A and Exhibit B) concerning which, as discussed more

fully in the accompanying memorandum of law, the Court may take judicial notice of without the need to convert the instant motion to one for summary judgment. Exhibit A is a copy of an e-mail dated June 15, 2018 from defendant Barry to plaintiff regarding his request for an accommodation that is a subject of this action; Exhibit B is a copy of an e-mail dated June 18, 2018 from plaintiff to defendant Barry in response. The court is respectfully requested to take judicial notice of these two exhibits.

9. As set forth in the accompanying notice of motion and memorandum of law, OCA Defendants respectfully request that the Court grant their motion to dismiss the SAC and for such other relief as the Court deems proper.

Dated: May 24, 2019



LEE ALAN ADLERSTEIN